

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Chapman
23553

FILE: B-208902 **DATE:** November 9, 1982
MATTER OF: Space Age Engineering, Inc.

DIGEST:

Protest is dismissed where a material issue is before a court of competent jurisdiction and other issues could have been raised in court, and the protester/plaintiff has not requested judicial relief pending a GAO decision, nor has court expressed interest in GAO decision.

Space Age Engineering, Inc. (SAE), protests the award of a contract to Evaluation Research Corporation (ERC) under solicitation DAAG10-82-R-0309 issued by Sharpe Army Depot (Army), Lathrop, California. SAE contends that the Army did not properly consider ERC's startup cost and SAE's offer to purchase equipment in order to save the Army equipment costs, that ERC misrepresented that it could provide equipment in the timeframe allowed, and that ERC relied upon a military officer with knowledge of the Army operations in question in violation of the conflict of interest statutes.

Subsequent to filing its protest, SAE filed suit in the United States District Court for the Central District of California (Civil Action File No. 82-4549-R), requesting injunctive relief. In the complaint, SAE raised the issue of the alleged violation of the conflict of interest statutes. The district court denied SAE's request for a preliminary injunction, but it has not yet decided the case on the merits.

It is the policy of our Office not to decide protests where the material issues are pending before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1982). SAE has not requested judicial relief pending a decision by our Office, and the district court has not expressed

023890

interest in our decision. Therefore, we will not consider the issues raised in court. While two of the issues raised here have not been raised in court, it is clear that they could have been raised and the permanent relief requested in the court is the same as requested here. In such circumstances, we will not consider those issues either. Syscon Corporation, B-208169, October 6, 1982, 82-2 CPD ____.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel